

05-1511 (DRD)

**PETITION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

AO 243 (Rev. 2/95)

UNITED STATES DISTRICT COURT		District PUERTO RICO
Name of Movant Eduardo Alicea-Torres	Prisoner No. 15461-069	Case No.
Place of Confinement United States Penitentiary, Atlanta, GA, 30315		
UNITED STATES OF AMERICA		V. EDUARDO ALICEA-TORRES (name under which convicted)
MOTION		
1. Name and location of court which entered the judgment of conviction under attack <u>United States District Court, District of Puerto Rico</u>		
2. Date of judgment of conviction <u>June 25, 1999 (Verdict) February 28, 2000 (Sentence)</u>		
3. Length of sentence <u>LIFE without Parole</u>		
4. Nature of offense involved (all counts) <u>Conspiracy to Possess and Distribute Controlled Substances. 21 U.S.C. §841(a)(1) & §846</u>		
5. What was your plea? (Check one)		
(a) Not guilty <input checked="" type="checkbox"/>		
(b) Guilty <input type="checkbox"/>		
(c) Nolo contendere <input type="checkbox"/>		
If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details: <u>N/A</u>		
6. If you pleaded not guilty, what kind of trial did you have? (Check one)		
(a) Jury <input checked="" type="checkbox"/>		
(b) Judge only <input type="checkbox"/>		
7. Did you testify at the trial? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
8. Did you appeal from the judgment of conviction? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		

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9. If you did appeal, answer the following:

- (a) Name of court First Circuit Court of Appeals
- (b) Result Conviction and Sentence Affirmed App#00-1547
- (c) Date of result January 22, 2004 U.S. v. Soto-Beniquez, 356 F.3d 1 (1st 2003)

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court United States Supreme Court

(2) Nature of proceeding Petition for Writ of Cert.

(3) Grounds raised Appellate Issues.

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result Petition Denied

(6) Date of result June 1, 2004.

(b) As to any second petition, application or motion give the same information:

(1) Name of court n/a

(2) Nature of proceeding n/a

(3) Grounds raised n/a

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(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐ n/a

(5) Result _____

(6) Date of result _____ n/a

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☐ n/a(2) Second petition, etc. Yes ☐ No ☐(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

n/a

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting the same.

Caution: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

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- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (h) Denial of right of appeal.

A. Ground one: Movant denied effective assistance of counsel guaranteed by
6th Amendment, U.S. Constitution. Strickland v. Washington, 466 US 688 (1984)

Supporting FACTS (state *briefly* without citing cases or law) _____

See attached "Memorandum of Law and Facts in Support of §2255 Motion"

B. Ground two: Movant denied effective assistance of appellate counsel as
guaranteed by 5th & 6th Amend. U.S. Const. Evitts v. Lucey, 469 US 387 (1985)

Supporting FACTS (state *briefly* without citing cases or law) _____

See attached "Memorandum of Law and Facts in Support of §2255 Motion"

C. Ground three: Denied Right to Jury Trial and Due Process of the Law under
5th & 6th Amendments, U.S.. Constitution.

Supporting FACTS (state *briefly* without citing cases or law) _____

See attached "Memorandum of Law and Facts in Support of §2255 Motion"

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D. Ground four: Movant is actually innocent of enhanced portion of sentence
in violation of Fundamental Fairness and Due Process of law under 5th Amend.
U.S. Constitution.
 Supporting FACTS (state *briefly* without citing cases, or law) _____

See attached "Memorandum of Law and Facts in Support of §2255 Motion"

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: _____

1. Ineffective assistance of counsel.
2. Supreme Court decision effecting substantive change in law §2255 ¶6(3)
3. Motion under §2255 proper vehicle to initially litigate and challenge criminal conviction on issues herein presented.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein:

(a) At preliminary hearing _____

(b) At arraignment and plea _____

(c) At trial Raymond Rivera-Esteves, Esquire

San Juan, PR 00936-7059

(d) At sentencing same

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(e) On appeal same(f) In any post-conviction proceeding pro se(g) On appeal from any adverse ruling in a post-conviction proceeding n/a

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

n/a(b) Give date and length of the above sentence: n/a

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒

Wherefore, movant prays that the Court grant petitioner relief to which he or she may be entitled in this proceeding.

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

5/6/2005
(Date)/s/ Eduardo Alicea

Signature of Movant

Eduardo Alicea-Torres

Reg No. 15461-069